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14 Sergio Garibay

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 LOS ANGELES DIVISION

18 Sergio Garibay,

19 Plaintiff,

20 vs.

21 Westlake Financial,

22 Defendant.
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Case No.:

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

**1. THE TELEPHONE CONSUMER
PROTECTION ACT;**

JURY TRIAL DEMANDED

1 Plaintiff, Sergio Garibay (hereafter “Plaintiff”), by undersigned counsel, brings
2 the following complaint against Westlake Financial (hereafter “Defendant”) and
3
4 alleges as follows:

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7
8 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

9 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3).

10 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
11 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
12 where Defendant transacts business in this district.
13

14 **PARTIES**

15 4. Plaintiff is an adult individual residing in Las Vegas, Nevada, and is a
16
17 “person” as defined by 47 U.S.C. § 153(39).
18

19 5. Defendant is a business entity located in Los Angeles, California, and is a
20
21 “person” as the term is defined by 47 U.S.C. § 153(39).
22

23 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

24 6. At all times mentioned herein where Defendant communicated with any
25 person via telephone, such communication was done via Defendant’s agent,
26 representative or employee.
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7. At all times mentioned herein, Plaintiff utilized a cellular telephone service and was assigned the following telephone number: 702-XXX-3759 (hereafter “Number”).

8. Defendant placed calls to Plaintiff's Number in an attempt to collect a debt.

9. The aforementioned calls were placed using an automatic telephone dialing system (“ATDS”) and/or by using an artificial or prerecorded voice (“Robocalls”).

10. When Plaintiff answered Defendant's calls he heard a prerecorded message before being connected to a live representative.

11. On or about November 15, 2018, during a live conversation, Plaintiff requested that Defendant cease all further calls to his Number.

12. Ignoring Plaintiff's request, Defendant continued to call Plaintiff's Number using an ATDS and/or Robocalls in an excessive and harassing manner.

13. Defendant's calls directly and substantially interfered with Plaintiff's right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff to suffer a significant amount of anxiety, frustration and annoyance.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47
U.S.C. § 227, *et seq.*

1 14. Plaintiff incorporates by reference all of the above paragraphs of this
2 complaint as though fully stated herein.
3

4 15. The TCPA prohibits Defendant from using, other than for emergency
5 purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent
6 Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).
7

8 16. Defendant's telephone system has the earmark of using an ATDS and/or
9 using Robocalls in that Plaintiff, upon answering calls from Defendant, heard a
10 prerecorded message.
11

12 17. Defendant called Plaintiff's Number using an ATDS and/or Robocalls
13 without Plaintiff's consent in that Defendant either never had Plaintiff's prior express
14 consent to do so or such consent was effectively revoked when Plaintiff requested that
15 Defendant cease all further calls.
16

17 18. Defendant continued to willfully call Plaintiff's Number using an ATDS
18 and/or Robocalls knowing that it lacked the requisite consent to do so in violation of
19 the TCPA.
20

21 19. Plaintiff was harmed and suffered damages as a result of Defendant's
22 actions.
23

24 20. The TCPA creates a private right of action against persons who violate
25 the Act. *See* 47 U.S.C. § 227(b)(3).
26

27 21. As a result of each call made in violation of the TCPA, Plaintiff is
28 entitled to an award of \$500.00 in statutory damages.

1 22. As a result of each call made knowingly and/or willingly in violation of
2 the TCPA, Plaintiff may be entitled to an award of treble damages.
3

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendant for:
6

- 7 A. Statutory damages of \$500.00 for each call determined to be in violation
8 of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
9 B. Treble damages for each violation determined to be willful and/or
10 knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);
11 C. Punitive damages; and
12 D. Such other and further relief as may be just and proper.
13
14

15 **TRIAL BY JURY DEMANDED ON ALL COUNTS**
16

17
18 DATED: December 27, 2018
19

TRINETTE G. KENT

20 By: /s/ Trinette G. Kent
21 Trinette G. Kent, Esq.
22 Lemberg Law, LLC
23 Attorney for Plaintiff, Sergio Garibay
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